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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,190	01/23/2004	Peter Fyler Lynch	9495	8071

27752 7590 04/19/2006

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EXAMINER

DOOLEY, JAMES C

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,190	<b>Applicant(s)</b> LYNCH, PETER FYLER	
	<b>Examiner</b> James C. Dooley	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Final Office Action is mailed in response to amendment filed January 30, 2006, wherein claim 1 was amended, claim 2 was canceled, claims 3-14 were presented as original, and new claims 15 and 16 were introduced.

#### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because photographs cannot be scanned with the definition required for publication. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

#### ***Claim Objections***

Claims 6 and 10 are objected to because of the following informalities: In line 2 of claims 6 and 10, "may" should be changed to "can". Appropriate correction is required.

Claims 6 and 10 are objected to because of the following informalities: In line 3 of claims 6 and 10, "juxtapose" should be changed to "juxtaposed".

Claim 14 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. The absorbent articles described in claim 1 are not a component of the apparatus. Therefore further describing the absorbent articles does not further limit claim 1.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the second horizontal direction" in line 19. There is insufficient antecedent basis for this limitation in the claim.

The recitation "the shelf" in lines 9-10, renders the claim indefinite. The shelf is not an element of the claimed device and it is improper to define claimed structure based on the relationship to an unclaimed element. In this case the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim if they did not include a shelf. This rejection could be overcome by including the shelf as a claimed component, or functionally describing the leg member connection; such as, "is connectable to a shelf."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-10, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Heroy (US 3,669,278). Heroy discloses a shelf display apparatus comprising first and second vertical support members (vertical portions at opposite ends of the top member 13), where the lower ends (15) of the vertical support members are connected to the shelf (10). Connected between the vertical support members is a top support member (13) where the top support member has a non-linear portion extending downward in a third direction and intersecting the second horizontal direction. The second horizontal direction is seen as perpendicular to the top support member along the shelf, as neither a first horizontal direction nor the direction of the second horizontal direction has been claimed.

With respect to claim 3, the top support member (13) contains multiple non-linear portions extending substantially across the entire length of the top support member (13).

With respect to claim 4, the shape of the non-linear portions is shown to be curved.

With respect to claim 5, a first fastening mechanism (16) connects the lower portion (15) of the vertical support members to the shelf (10).

With respect to claim 6, the first fastening mechanism has horizontal bottom plate (20) juxtaposed to the shelf (10).

With respect to claim 8, the first fastening mechanism is an engaging member, which has portion (25) that is inserted through a receiving area (11) of the shelf (10).

With respect to claim 9, a second fastening mechanism (16) joins the lower end (15) of the second vertical support member to the shelf (10).

With respect to claim 10, the second fastening mechanism has horizontal bottom plate (20) juxtaposed to the shelf (10).

With respect to claim 12, the second fastening mechanism (16) is an engaging member, which has portion (25) that is inserted through a receiving area (11) of the shelf (10).

Claims 1, 3-5, 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgins (US 6,234,325). In Figure 2, Higgins discloses a shelf display apparatus comprising a first (30') and second (32') horizontally spaced vertically extending support members having upper and lower ends, where the lower ends are connected to a shelf (24'). A top support member (36') is connected between the support members having nonlinear portions (38a, 38b). The top support member (36') has nonlinear portions (38a,38b) extending in horizontal directions that are not parallel to the horizontal spacing between the vertical support posts.

With respect to claim 3, the nonlinear portions (38a,38b), as shown in figure 2, extend substantially across the entire length of the top support member (36').

With respect to claim 4, as shown in figure 2, the non-linear portions have a curved shape.

With respect to claim 5, Higgins discloses the first and second vertical support members are connected to the shelf (24') by a fastening mechanism (Col. 3 lines 40-43).

With respect to claim 15, Higgins shows first (30') and second (32') vertical support members having upper and lower ends, where the top support member (36') is connected between the upper ends of the vertical support members, as shown in figure 2.

With respect to claim 16, considering a first horizontal direction extending between the vertical support members (30',32'), Higgins discloses the non-linear portions extend in a second direction horizontally rearward and a third direction horizontally forward, as shown in figure 2.

Claims 1,3,4,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingelson (US 2,747,959). Ingelson discloses a shelf display apparatus having first and second spaced apart vertical support members (7) having a lower end connected the shelf (6). Connected between the vertical support members is a top support member (1). The top support has a non-linear portion, as shown in figure 1. The non-linear portion extends in a third direction, inward, and intersects a second horizontal direction, outward.

With respect to claim 3, the non-linear portions of the top support (1) extend across the entire length of the top support member.

With respect to claim 4, the non-linear portions are shown to be curved.

With respect to claim 13, the non-linear portion comprises a solid wall, which is disposed between the first and second vertical support members (7).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heroy ('278) alone. Heroy disclose a shelf display apparatus as described above. Heroy does not disclose absorbent articles displayed on the shelf. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to display diapers on the shelf display apparatus of Heroy. Upon construction of the shelf of Heroy one of ordinary skill in the art would be motivated to display any type of article.

### ***Allowable Subject Matter***

Claims 7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Response to Arguments***

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James C Dooley  
Examiner  
Art Unit 3634

April 14, 2006



RICHARD E. CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER